

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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<b>PAUL</b>	<b>E. ABATE JR</b>
<b>MARISA</b>	<b>E. ABBRIANO</b>
<b>FRANK</b>	<b>ADINO</b>
<b>ROGER</b>	<b>J. AHEE</b>
<b>ELIZABETH</b>	<b>AMBROSINO</b>
<b>RAE</b>	<b>AMMIRATI</b>
<b>LAWRENCE</b>	<b>J. ANDERSON</b>
<b>JACK</b>	<b>C. ANHALT</b>
<b>CARLOS</b>	<b>H. ARIZA</b>
<b>ANTHONY</b>	<b>V. ARMSTRONG</b>
<b>DOREEN</b>	<b>A. ASCATIGNO</b>
<b>ROBERT</b>	<b>B. AUGENTE</b>
<b>MARYLOU</b>	<b>AURRICHIO</b>
<b>ALFRED</b>	<b>BARRASSO</b>
<b>WAYNE</b>	<b>BASKIN</b>
<b>LUIS</b>	<b>E. BASSO</b>
<b>CHRISTINE</b>	<b>H. BASTEDENBECK</b>
<b>FAYE</b>	<b>F. BAUGHMAN</b>
<b>JAMES</b>	<b>M. BAYREUTHER</b>
<b>JOEL</b>	<b>A. BEARMAN</b>
<b>FREDERICK</b>	<b>J. BECKER</b>
<b>JAMES</b>	<b>W. BECKER</b>
<b>STUART</b>	<b>D. BELSKY</b>
<b>MARK</b>	<b>BENSON</b>
<b>MICHELLE</b>	<b>BERKOWITZ</b>
<b>MITCHELL</b>	<b>BERKOWITZ</b>
<b>HARRY</b>	<b>F. BOULTER</b>
<b>KELLY</b>	<b>A. BOULTER</b>
<b>EDWARD</b>	<b>V. BRADLEY</b>
<b>MARTIN</b>	<b>J. BRAUN</b>
<b>HOWARD</b>	<b>C. BRAXTON</b>
<b>DONALD</b>	<b>A. BROWNE</b>
<b>DAVID</b>	<b>L. BURKE</b>
<b>KATHLEEN</b>	<b>A. BURNS</b>
<b>GRACE</b>	<b>M. CACCIOLA</b>
<b>GILBERT</b>	<b>I. CAICEDO</b>
<b>RAMON</b>	<b>A. CALDERON</b>
<b>DEBRA</b>	<b>CALI</b>
<b>ALFRED</b>	<b>CALVANO</b>
<b>CEDRIC</b>	<b>G. CANNON</b>
<b>CHARLES</b>	<b>E. CAPLE</b>
<b>LINDA</b>	<b>CARLSON</b>

**Docket #: 07 CIV. 0612 (SCR)**

**COMPLAINT**

**PLAINTIFFS DEMAND TRIAL  
BY JURY**

WILLIAM	CARTER
RICHARD	J. CASALETTO
ANDRE	CATAPANO
DENNIS	K. CATUCCI
MICHAEL	F. CAVANAGH
RICHARD	J. CHATTERTON
PHILLIP	J. CHINDELAS
MARY	A. CITARELLA
ESTHER	COARSE
ROBERTO	O. COLON
WILLIAM	COLSEN
KEVIN	P. CONNELLY
JAMES	E. CONNORS
LOUIS	S. COOK
ROBERT	D. COOK
RICHARD	L. COOPER
LUIS	F. CORRALES
ALBERT	J. CRUZADO
STEVEN	W. CUEVAS
GEORGE	E. CUNDARI
ANTHONY	M. CURATOLA
FRANK	S. CURATOLA
TIMOTHY	B. CUSACK
FRANK	C. DAMATO
MARY	F. DANDRIGE
JAMES	T. DARNOWSKI
ROY	DAVID
BRENDAN	P. DEAN
JEROME	F. DECANIO
ANTHONY	J. DEGENNARO
EDWIN	D. DELAPAZ
KIRK	E. DELNICK
THERESA	M. DEROSA
JO	DESANTIS
JOSEPH	J. DIBONA
PATRICK	J. DILLON
JOHN-PAUL	P. DIMEN
GEORGE	C. DOLCE
GEORGE	H. DORSEY
ANGELA	DRAGOTTO
ALAN	C. DUBBS
STEVEN	S. DUBIN
WILLIAM	J. DUNCKLEE
THOMAS	W. DUNLEAVY
ANTHONY	L. DURANTE

<b>CHRISTOPHER</b>	<b>E. ECCLESTON</b>
<b>DAVID</b>	<b>L. EDICK</b>
<b>SERELE</b>	<b>EHRICK</b>
<b>BRIAN</b>	<b>J. ELLICOTT</b>
<b>THOMAS</b>	<b>K. EPPINGER</b>
<b>RICHARD</b>	<b>L. ERDEY</b>
<b>KEVIN</b>	<b>EURIGHT</b>
<b>PATRICIA</b>	<b>FAREWELL</b>
<b>ERIC</b>	<b>D. FAY</b>
<b>CHARLES</b>	<b>W. FISKE</b>
<b>ROBERT</b>	<b>S. FISSETTA</b>
<b>ANN</b>	<b>L. FITTON</b>
<b>BENJAMIN</b>	<b>J. FLANDERS</b>
<b>CHARLES</b>	<b>R. FLORES</b>
<b>NICOLAS</b>	<b>E. FLORES</b>
<b>RAYMOND</b>	<b>FOGARTY</b>
<b>CHARLES</b>	<b>P. FRASER</b>
<b>LISA</b>	<b>M. FREITAG</b>
<b>ERIC</b>	<b>W. FRICK</b>
<b>MITCHELL</b>	<b>FRIEDLAND</b>
<b>KATHERINE</b>	<b>FUCHS</b>
<b>IRVING</b>	<b>GAFFNEY</b>
<b>NICHOLAS</b>	<b>R. GALANTE</b>
<b>SCOTT</b>	<b>D. GALLETTA</b>
<b>ALBERT</b>	<b>T. GEHRES JR</b>
<b>VICTORIA</b>	<b>J. GENOVESE-</b>
	<b>BELSKY</b>
<b>NANCY</b>	<b>J. GILLIGAN</b>
<b>JOSEPH</b>	<b>GILOLELLI</b>
<b>SHELDON</b>	<b>GLAUBACH</b>
<b>KATHLEEN</b>	<b>M. GONCZI</b>
<b>JOSE</b>	<b>E. GONZALEZ</b>
<b>SERGIO</b>	<b>H. GONZALEZ</b>
<b>SUSAN</b>	<b>A. GONZALEZ</b>
<b>RAFAEL</b>	<b>A. GOYENECHEA</b>
<b>FREDDIE</b>	<b>GOYTIA</b>
<b>ALAN</b>	<b>M. GREENBERG</b>
<b>JAY</b>	<b>A. GRIFFIN</b>
<b>LLOYD</b>	<b>L. GROSSBERG</b>
<b>JULIE</b>	<b>A. GUEVARA</b>
<b>LIZETTE</b>	<b>GUILLEN</b>
<b>LUIS</b>	<b>F. GUTIERREZ</b>
<b>ANDREW</b>	<b>S. HABER</b>
<b>ROBERT</b>	<b>D. HAGGERTY</b>
<b>HOWARD</b>	<b>O. HAHN</b>

JEFFREY	L. HALPERN
ELISE	L. HANLON
VINCENT	D. HANLON
THOMAS	S. HANNAN
CHARLES	D. HARRIS
ROBERT	J. HART
PAMELA	S. HEHN
BRIAN	W. HENNESSY
KEVIN	G. HENNESSY
STEPHANIE	HERBERT
BARRET	D. HIRSCH
BARBARA	A. HODGE
HOPETON	A. HOLLAR
KEVIN	N. HOOGHUIS
PAUL	HOPPER
FRANK	J. HORAN
PAIGE	HUMPHRIES
PETER	F. JAKUBONSKI
WALTER	F. JEHL
STEPHEN	T. JOHNSON
VINCENT	K. JOYCE
MICHAEL	T. KAISER
ANDRIENNE	M. KNIGHT
RONALD	J. KOCHIE
JEFFREY	D. KRAMER
GEORGE	KROUSTALLIS
IRENE	C. KRUITEN
TAMMY	A. LABARBERA
ANTHONY	LAFERRERA
KAREN	E. LAMANNA
SHARI	LANDSBERG
GIUSEPPE	I. LAVORE
MICHAEL	W. LEE
ALANA	L. LELLA
ABRAHAM	Z. LEVINSON
TIMOTHY	J. LINDBLOM
MATTHEW	LINDNER
MARK	LOBEL
JOSEPH	P. LOMINO
THOMAS	R. LUBY
ADOLPH	LYNCH
HOWARD	I. MANDELBAUM
JUDAH	MARCUS
MICHAEL	L. MARTINO
ANTHONY	MARULLO

ROBERT	J. MAXWELL
LORI	MAZZEO
LAWRENCE	A. MCCALLA
CHARLES	T. MCLAUGHLIN
ERIC	MCNEICE
ALBERTO	V. MEADE
PETER	B. MECCIO
RUDY	A. MEDINA
WILLIAM	L. MELARAGNO
HELIODORO	C. MENDES
RICARDO	MERCADO
EDWARD	J. MEYER
JOANNE	MILLER
MARTIN	P. MILLER
MARY	M. MILLER
DEBORAH	A. MILLS-RUIZ
BRIAN	M. MILZOFF
NORBERTO	O. MONELL
AMY	L. MONROE
ANDREA	MONTGOMERY
WILLIAM	G. MOORE
STEVEN	J. MORELLI
ANN	E. MULLOOLY
TRACEY	A. MULQUEEN
MURRAY	M. MURAD
ANTHONY	V. MURAWSKI
EUGENE	P. MURPHY
JAMES	MURPHY
RALPH	J. MUSTILLO
MICHAEL	A. MUSTO
WALTER	J. NELSON
JOHN	V. NEVINS
ARTHUR	NICOLAS
CARL	NUNZIATA
VINCENT	I. OCCHIPINTI
WALTER	P. ODINOKOW
JOHN	D. O'LOUGHLIN
MICHAEL	P. O'LOUGHLIN
JANICE	A. OLSZEWSKI
PETER	J. O'TOOLE
JOSEPH	A. PASTOR
JOSEPH	PATAKY
OLEG	PATRIKEYEV
JOSEPH	R. PAZ
REGINA	F. PELLEGRINO

OSVALDO	S. PEREZ
FELIPE	F. PERIU
RON	K. PFEFFER
LORRAINE	M. PIRILLO
JONATHAN	P. PISTILLI
EDMUND	PLATT
STEVEN	F. POLLACKOV
RICHARD	B. POMERANTZ
LAWRENCE	J. PONTRELLI
JEFFREY	S. QUIGLEY
JOHN	S. QUIGLEY
STEVEN	QUIRINDONGO
JEFFREY	D. RACE
JOHN	P. RAFTERY
RAFAEL	M. RAMIREZ
GLAUCO	A. RANCIER
JAMES	D. RAWCLIFF
BONNIE	L. REGAN
RICHARD	M. REMZ
DAVID	G. RESTUCCIO
JOSEPH	R. RIVERA
MIGUEL	A. ROCHE
ANDRES	RODRIGUEZ
PAUL	S. ROSADO
JEROME	P. ROSENTHAL
ANTHONY	T. ROSIELLO
JOHN	J. ROTHMUND
DONALD	ROTHSCHILD
SCOTT	E. ROTHSCCHILD
DAVID	RUDNITZKY
DAVID	S. RUSSELL
STEPHEN	A. RUSSO
JOHN	F. RYAN
JOSEPH	S. SANTAMARINA
GERARD	E. SANTIAGO
SYLVIA	R. SCEARCY
THOMAS	H. SCHULZ
LEONARD	E. SCHWADE
JOHN	J. SCOTCH
LISA	A. SECKLER-ROODE
EARTHA	SEDENIUSSSEN
PETER	A. SENNERT
BARRY	K. SHAPIRO
MICHAEL	J. SHERIDAN
PHILIP	A. SOTO

PHILIP	H. SPIRO
ALLEN	W. STEUER
ROBERT	W. STOCK
AMY	B. STONE
DAVID	A. STONE
JOHN	Q. SULLIVAN
ALVIN	J. SURIEL
IAN	C. SWORDS
MILTON	SYLMAN
CHARLES	E. TAHANEY
MICHAEL	A. TALLETTI
MICHAEL	I. TAMBASCO
ROSARIO	O. TERRANOVA
LEONARD	L. TIBERI
CLARENCE	J. TOBIN
EDITH-ELIDA	TORRES
JUAN	A. TORRES
NORBERTO	J. TORRES
WILLIAM	R. TORRES
ANTHONY	J. VANARIA
VINCENT	I. VARIALE
NELSON	J. VELAZQUEZ
MICHAEL	W. VETACK
SHARON	A. VITALE
TONY	VOXAKIS
DEBRA	H. WAINWRIGHT
SUSAN	A. WALTERS
STEVEN	WARREN
CURTIS	S. WAXENBERG
KIM	C. WEAVER
ROBERT	S. WEIHS
PHILIP	B. WEISS
THEOPHILUS	W. WELLS
DENISE	M. WERNER
DARREN	R. WETSELL
ROBERT	J. WHITE
JOHN	O. WIELAND
WELDON	WILLIAMS
CRAIG	M. WING
SPIRO	YIORAS

**CATHERINE M. NOWAK AS ADMINISTRATRIX  
FOR THE ESTATE OF PETER W. LEMBECK, and  
John and Jane Does 1-100,**

**Plaintiffs,**

**- against -**

**CITY OF NEW YORK; FIRE DEPARTMENT OF  
THE CITY OF NEW YORK; and JOHN DOES 1-10,  
the names being fictitious and presently unknown, all  
of whom are named individually and in their capacity  
as agents and/or employees of the City of New York,**

**Defendants.**

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Plaintiffs, by and through their attorneys, the Law Offices of Pat Bonanno and Associates,  
P.C., complaining of the defendants, respectfully allege as follows:

**JURISDICTION**

1. The Jurisdiction of this court is invoked pursuant to 28 U.S.C. §§ 1331, 1343 and 1367 and 29 U.S.C. § 216(b), and pendent claims under the Constitution and Laws of the State of New York.

**VENUE**

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

**PARTIES**

3. Plaintiffs are, and at all times mentioned herein, have been employed by defendants in the positions of Fire Department of the City of New York Emergency Medical Service Lieutenant, SEMSS I and Fire Department of the City of New York Emergency Medical Service Captain, SEMSS II and related positions within the Fire Department of the City of New York (collectively hereinafter referred to as “EMS”).



4. Plaintiffs bring this action for a declaratory judgment, back pay and other relief pursuant to 29 U.S.C. § 207, 29 U.S.C. § 216(b) and 28 U.S.C. § 1331 to remedy the defendants' willful and unlawful violations of federal law complained of herein.

5. Plaintiffs are identified in the caption of the Complaint and have given their written consent to be party plaintiffs in this action pursuant to 29 U.S.C. § 216(b). Such written consents are appended to this Complaint in the Appendix. These written consents set forth each Plaintiff's name and address.

4. Each of the Plaintiffs in this action while employed by Defendants in the position of EMS Supervisor and related positions has been an "employee" within the meaning of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 203(e)(1).

5. Defendant New York City is an entity subject to suit under FLSA, and was at times material herein, a public agency within the meaning of section 3(x) of the FLSA, 29 U.S.C. § 203(x).

6. Defendant New York City has its principal place of business located at One Centre Street, New York, NY.

7. Defendant New York City Fire Department is an agency of the City of New York and is a public agency subject to suit under the FLSA, and at all times material herein, was a public agency within the meaning of section 3(x) of the FLSA, 29 U.S.C. § 203(x).

8. Defendant New York City Fire Department maintains its principal place of business at 9 MetroTech Center, Brooklyn, NY.

### **ALLEGATIONS**

9. At all time material herein, the Plaintiffs have worked within the New York City Fire Department in the position of EMS Supervisor.

10. Within the last three years while working in the position of EMS Supervisor for the Defendants, Plaintiffs have worked in excess of forty hours per week.

11. During the times that Plaintiffs have worked in excess of forty hours in a week, Defendants have failed to provide Plaintiffs with the rights and protections provided under the FLSA.

12. Defendants have permitted violated FLSA 29 U.S.C. §§ 207 (a) and (o) by, among other things: permitting Plaintiffs to perform work on behalf of the Defendants before and after their scheduled tour of duty and failing to compensate Plaintiffs for such work activities; failing to pay Plaintiffs overtime compensation unless the time spent performing the work equaled or exceeded fifteen minutes in length; refusing to pay Plaintiffs for work performed during meal periods; failing to include shift differentials when calculating overtime rates of pay; failing to pay out compensatory time when Plaintiffs have left employment with Defendants; improperly designating compensatory time as non-FLSA time; failing to provide FLSA protection to earned compensatory time and requiring Plaintiffs to attend mandatory assignments during off-duty time without compensation.

### **CAUSES OF ACTION**

13. Paragraphs 1 through 12 are incorporated by reference as though fully set forth at length herein.

14. FLSA requires payment of overtime to employees who work in excess of the hourly standards set forth therein.

15. 29 U.S.C. § 207(a) requires the payment of overtime compensation at a rate of one and one-half times an employee's regular rate of pay for all hours worked in excess of forty hours per week.

16. 29 U.S.C. § 207(o) permits the limited use of compensatory time off as a substitute for cash compensation subject to the terms and conditions under 29 U.S.C. § 207(o).

17. Defendants have failed to comply with the FLSA overtime requirements as stated herein.

18. By failing and refusing to pay the Plaintiffs overtime pay required by law, the Defendants have, and continue to, willfully and intentionally violate the provisions of FLSA.

19. Defendants pay practices as alleged herein violate 29 U.S.C. § 207.

20. This action is intended to remedy the FLSA violations committed by Defendants against Plaintiffs for the maximum time period permitted under law.

21. At all times material herein, the Plaintiffs have been unlawfully deprived of overtime compensation and other relief for the maximum statutory period allowed under federal law.

22. As a result of Defendants willful and intentional violations of FLSA, there have become due and owing to the Plaintiffs an amount that has not yet been precisely determined. The employment and work records for the Plaintiffs are in the exclusive possession, custody and control of Defendants and the Plaintiffs are thus unable to state at this time the exact amount owing to each Plaintiff.

23. Defendants are under a duty pursuant to 29 U.S.C. § 211( c), and other statutory and regulatory provisions, to maintain and preserve payroll and other employment records with respect to the Plaintiffs from which the amount of Defendants' liability can be ascertained.

24. Pursuant to 29 U.S.C. § 216(b), Plaintiffs are entitled to recover liquidated damages in an amount equal to their back-pay damages for the Defendants' failure to pay overtime compensation. Additionally, Plaintiff's are entitled to an award of interest on their back-ay damages until such time damages are paid.

25. Pursuant to 29 U.S.C. § 216(b), Plaintiffs are entitled to recover attorneys' fees and costs associated with this action.

**PLAINTIFF DEMANDS TRIAL BY JURY**

**WHEREFORE**, Plaintiff requests the following relief jointly and severally as against all of the Defendants:

- 1) Judgment declaring that the Defendants have willfully and wrongfully violated their statutory obligations and deprived each of the Plaintiffs of his or her rights;
- 2) Order directing a complete and accurate accounting of all compensation to which Plaintiffs are entitled;
- 3) Award Plaintiffs monetary liquidated damages equal to their unpaid compensation;
- 4) Award Plaintiffs interest on their unpaid compensation;
- 5) Award Plaintiffs their reasonable attorneys fees to be paid by the Defendants, plus the costs and disbursements of this action; and,
- 6) such other and further relief as this Court may deem just and proper.

Dated: January 12, 2007  
Poughkeepsie, New York

Respectfully submitted  
LAW OFFICE OF PAT BONANNO AND ASSOCIATES, P.C.  
Attorneys for Plaintiffs  
222 Church Street  
Poughkeepsie, NY 12601  
(845) 473-0427

By: \_\_\_\_\_/s Thomas M. Gambino\_\_\_\_\_  
THOMAS M. GAMBINO, ESQ. , Of Counsel (TG6332)